

STATE OF TENNESSEE

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June 24, 2004

Opinion No. 04-098

Local Governing Body; Local School District; Funding

QUESTIONS

1. May a local governing body withhold, from a local school district, those funds which are allocated for schools?
2. Must a school board maintain five percent (5%) of its annual operating budget in a particular fund balance?
3. May a local governing body compel a school board to utilize its legal department, or may a school board seek outside legal representation?
4. Under state law, do both a local education agency (LEA) and the local governing body have to vote on transfer of funds from the LEA's reserve fund?

OPINIONS

1. We have found no authority for a local governing body to withhold funds appropriated for a local school district's budget.
2. We have found no state law that requires a school board to maintain five percent (5%) of its annual operating budget in a particular fund balance.
3. A school board may hire its own legal counsel.
4. The local governing body must provide funding for school budgets, and thus is the entity that decides what revenue sources will be tapped to fund a school budget. The local governing body does not need the local school board's approval to appropriate school reserve funds.

ANALYSIS

1. **Withholding Funds From Local School District**

In your question, you referred to “allocated” school funds. If you mean BEP funds, Tenn. Code Ann. § 49-3-351(c) requires BEP funds to be spent only on BEP classroom and nonclassroom components. If you mean available education funds that have not yet been appropriated to the school board’s budget, the local school board may not expend these funds. *See* Tenn. Code Ann. § 49-2-301(b)(1)(W); *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 225 (Tenn. 1988). If you mean funds properly appropriated by the local governing body for the local school district budget, the local governing body may not withhold the funds. *See* Tenn. Code Ann. § 49-2-101(1); *Bandy v. Sullivan County Bd. of Edc.*, 186 Tenn. 11, 207 S.W.2d 1011 (1948).

A local governing body may adopt a school budget which is less than that proposed by the local school board, although it may not alter or revise line items. *See Morgan County Board of Commissioners v. Morgan County Bd. of Edc.*, 1994 WL 111457, *5 (Tenn. App. 1994); Tenn. Code Ann. § 6-56-204(b). The local governing body also has the authority to levy the school tax but cannot be mandated to set the tax rate at a particular level recommended by the local school board. *See State ex rel. Bobo v. Moore County*, 207 Tenn. 622, 632, 341 S.W.2d 746 (1960). We have not, however, found authority for a local governing body to withhold funds that have been appropriated for the school district’s use.

2. **“Reserve Fund”**

Tenn. Code Ann. § 49-3-352(c) states as follows:

(c) Any fund [“dedicated education fund”] balance remaining unexpended at the end of a fiscal year in the general fund of the local public education system shall be carried forward into the subsequent fiscal year. Such fund balance shall be available to offset shortfalls of budgeted revenues or, subject to the provisions of 49-2-301(f)(23),¹ shall be available to meet unforeseen increases in operating expenses. The accumulated fund balance **in excess of three percent (3%)** of the budgeted annual operating expenses for the current fiscal year may be budgeted and expended for nonrecurring purposes but shall not be used to satisfy appropriation requirements for recurring annual operating expenses. Notwithstanding the provisions of this section or

¹ Now codified at Tenn. Code Ann. § 49-2-301(b)(1)(W) (school budgeting process).

any other provisions of the law to the contrary, in any fiscal year in which state-shared revenues distributed to counties are reduced below the levels distributed to counties in the 2002-2003 fiscal year, any or all to [sic] the accumulated fund balance may be used for education purposes without restrictions. (Emphasis added.)²

In this statute are four rules on the use of accumulated school fund balances. First, if a school board does not spend the entire amount appropriated for its budget within a fiscal year, the money left over must be carried forward to the next fiscal year. These funds do not revert to local or state government. These funds remain in the school fund, thus creating the “accumulated fund balance.” Second, the school board may use these funds to offset shortfalls of budgeted revenues or, within the budget process, to meet unforeseen increases in operating expenses. Third, the statute allows the excess of the accumulated fund balance over (3%) to be budgeted and expended for nonrecurring purposes. Implied in this third rule is a requirement that at least 3% of the accumulated fund balance be held in reserve. Fourth, the statute lifts the restrictions of all the preceding rules if the amount of the local government’s state-shared revenues declines below the level of the 2002-03 fiscal year. If the local governing body receives less state-shared revenue, all or part of the accumulated fund balance may be used for any educational purpose.³

Thus, the statute requires a three percent (3%) fund balance, *i.e.* a reserve, unless the local government’s state-shared revenues decline below a certain amount. We have found no statute requiring a five percent (5%) reserve.

3. Legal Representation

Under Tenn. Code Ann. § 49-2-203(b)(5), a school board has the authority to employ legal counsel to advise or represent the board.

4. Use of Accumulated School Fund Balances

The accumulated school fund balance is a part of the dedicated education fund. Tenn. Code Ann. § 49-3-352(a).⁴ The decision to use a portion of this balance rests with local governing body. The local governing body and the local school board have complementary but different roles in the school budget process. Op. Tenn. Att’y Gen. 99-100. The local school board’s director of schools presents the budget the board has adopted to the local governing body. Tenn. Code Ann. § 49-2-203(a)(10). As noted earlier, the local governing body has the authority to approve, or disapprove,

² See also Tenn. Code Ann. § 49-2-203(a)(10)(B)(ii).

³Both fiscal years 2002-03 and 2004-05 have triggered the availability of funds under the last sentence of Tenn. Code Ann. § 49-3-352(c). See Memo, Lana C. Seivers, Ed.D., to Chris Henson, dated May 3, 2004 (copy attached).

⁴ All appropriations from all sources to fund public school education are deposited in the “dedicated education fund.” Tenn. Code Ann. § 49-3-352(a).

the proposed budget. Tenn. Code Ann. § 49-2-201(1); Op. Tenn. Att’y Gen. 99-100. When the local governing body adopts a school budget, it appropriates funds for the budget. Tenn. Code Ann. § 49-2-201(1). The local governing body does not have to seek the school board’s concurrence when it selects which funds will be applied to the school budget. The selection of funds is a part of the appropriation⁵ process, which is controlled by the local governing body.

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⁵ “Appropriate” means, among other things, “to prescribe a particular use for particular moneys; to designate . . . a fund . . . for a distinct use.” *Black’s Law Dictionary* (6th ed.), page 101. “An appropriation is a legal authorization to expend [public] funds.” 63C Am.Jur.2d, *Public Funds*, § 33.